

REMARKS

In response to the Restriction Requirement mailed February 27, 2008, Applicants elect with traverse to have the claims of Group I (claims 1-10, 12-27, 30-33, and 42-50) examined in the subject application. Applicants reserve the right to file one or more divisional applications directed to the non-elected claims 11-12, 28-29, 34-41 in Group II. Also, Applicants respectfully submit that the Office may have erroneously listed claim 12 in Group II.

According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Moreover, "[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." MPEP §803 (emphasis added).

Applicants respectfully submit that restriction is not proper in this case because Groups I and II relate to the same invention within the meaning of the statute. The Office points out that Group I relates to system for monitoring network latency while Group II is drawn to logging and management of performance data in a network computer. Those skilled in the art understand that latency is one measure of performance. Moreover, the modes of operation are not so different as to require separate examination. For example, claim 12, while reciting performance data, also recites that the performance data comprises "the round trip latency for the first request/response pair." Also, claims 28-29 discuss performance data relating to an **error condition corresponding to a first request** (emphasis added). Even claim 11 recites "in response to the received result for each of the plurality of RPCs, **monitoring on the client a status of each of the plurality of RPCs sent to the server**" (emphasis added). Furthermore, independent claim 34 recites "a performance data measurement module configured to, at least: generate performance data **concerning requests from the client system and corresponding responses to the computerized client system**" (emphasis added).

Applicants respectfully submit that for the purpose of issuing the present restriction requirement any such inventions in Groups I and II cannot fairly be said to be

materially different because all claims include recitation of processing data relating to requests from a client system and the corresponding responses received by the client system. Therefore, any reliable search of the prior art and examination involving the claims of Group I will necessarily co-extend with the search and examination of the claims of Group II. Even if Groups I and II are considered as directed to different inventions, maintaining all the claims in the present application should not add more than a minimal burden on the Office. In contrast, the burden imposed on Applicants to file, prosecute, issue, and maintain separate patents rather than a single patent is relatively great.

In view of the foregoing, Applicants respectfully ask the Examiner to withdraw the restriction requirement.

The Commissioner is hereby authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,

/TAN-CHI YUAN/

Tan-Chi Yuan, Limited Recognition No. L0113
SENNIGER POWERS,LLP
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RMB/ATY/eaw